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ENGLISH SERIES NO. 7.

THE TRIAL OF JOHN PETER ZENGER (1734) and THE FREEDOM OF THE PRESS.

Prepared by the personnel of the Work Projects Administration
Project No. 665-08-3-236.
A. YEDIDIA, Supervisor. P. RADIN, Editor.

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INTRODUCTION

Few events in our colonial history are better known, and deserve to be better known, than the trial of John Peter Zenger, the New York printer, for libel. Today, of all times, it is well to recall what his trial and acquittal signified for the subsequent history of the United States.

On November 17th 1734 John Peter Zenger was arrested "for printing and publishing several seditious libels dispersed throughout his JOURNALS or NEWS PAPERS ... as having in them many things, tending to raise frictions and tumults, among the people of this province."

So, in part, ran the warrant issued by the Council.

For the legally constituted authorities to attempt to arrest a printer for publication of what it deemed to be libellous material, was in itself not strange. It had happened before without exciting any marked controversy. What then was there about this particular case that made it the storm-center for the most violent of discussions and led to the trial of an insignificant printer becoming a turning point in the history of free speech, in what was to become the United States? "It's results", states the most important of Zenger's biographers, (1) "were of greater magnitude than any of the participants could have imagined. It established the freedom of the press in North America, it wrought an important change in the law of libel and marked the beginning of a new era in popular government."

To understand how this happened it will be necessary to give a brief sketch of the conditions that existed in New York after the English captured that colony from the Dutch in the year 1660.

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(1) John Peter Zenger, His Press and his Trial. By Livingston Rutherfurd. New York, 1904. pp. 4 - 5.

The government that the English installed was unusually arbitrary and despotic in character. Revenues were collected as the governors saw fit and the money so obtained was disbursed by officials who gave no accounting at all to the people. Since this led to numerous and scandalous abuses, the New Yorkers who had not been accustomed to such conditions,under the old Dutch government, soon made their displeasure felt in a most determined fashion. Everywhere the cry for radical changes was heard. Assemblies boldly demanded that revenue-grants be limited to specific purposes; that the money so obtained be entrusted to officials responsible to the legislature and that the salaries paid governors and judges be dependent upon the consent of the people. Naturally such fundamental demands cut deeply into the prerogatives of the Crown and were vigorously resisted by those in power in London and in the Colonies.

The culmination of this struggle between tyrannical governors and the people, occurred during the administration of William Cosby (1732-1736). So arbitrary were his acts that the resentment they called forth at the time had many of the elements of a political revolution.

It was in such an atmosphere that Zenger's trial took place.

Zenger was born in Germany in 1697. He arrived in New Work in 1710 and was, shortly after, apprenticed to William Bradford. He was naturalized in Maryland in 1720 and a year after his return to New York, in 1722,he was made a freeman of the city. He set up his own printing shop in 1726. He printed a few political tracts and theological works in the late twenties and early thirties but they were of an unimportant character. His rise to fame began when he undertook to publish a newspaper, - The New York Weekly Journal - of which the first number appeared on November 5, 1733.

This paper was planned and partially financed by the so-called Popular Party, one of whose prime objectives was to so arouse indignation against the abuses and tyrannical acts of

the very obnoxious Governor Cosby, that he would be recalled. The intellectual leaders in this attack on the Governor were also the main contributors to the newspaper. James Alexander seems to have been the editor-in-chief.

Within a short time the Journal and its independence became the talk of the town. Its contributors grew bolder and bolder. It was not surprising then that, before long, a jury called upon the Assembly to condemn certain issues and advised that they "be burnt by the hands of the common Hangman as containing in them many things derogatory of the Dignity of His Majesty's Government.... and tending to raise seditions and tumults among the people (of the Province.)" By order of Council the public burning was approved and took place on November 6th, 1734. Zenger's arrest followed, as we saw, soon afterward.

Zenger was treated with unusual severity and his bail fixed so high that he could not possibly furnish it. Additional charges were filed against him for publishing statements that were "false, scandalous, malicious, and seditious."

Fortunately those who had written most of the articles, William Smith and James Alexander, rushed to his defense. They antagonized the Chief Justice immediately by questioning the authority of the commission of the justice of the Common Pleas, DeLancey, who had placed Zenger's bail at an impossible sum. The government, apparently bent upon convicting the poor printer, at once had Smith and Alexander disbarred. Both subsequently protested to the Assembly. "Instead of consulting our law books, and doing what we think consistent therewith, for the benefit of our clients" they insisted that their disbarrment by the Chief Justice meant that, "(lawyers) must study in great men's causes, and only what will please the judges, and what will most flatter men is power."

There was some difficulty in obtaining counsel for Zenger but finally Andrew Hamilton, a distinguished lawyer and statesman of Pennsylvania, agreed to act and the trial began. Hamilton's speech is well known. He insisted that men have a

right "to complain when they are hurt; ... publicly to remonstrate the abuses of power in the strongest terms ... and to assert with courage the sense they have of the blessing of liberty, the value they put upon it, and their resolution at all hazards to preserve it." Continuing, he said, "While men keep within the bounds of truth, I hope they may with safety both speak and write their sentiments of the conduct of men in power ... Were this to be denied, then the next step may make them slaves."

In his summing up to the jury he pointed out that its members had the right and power to decide the law and the facts. "The question before the court" he thundered, "is not the cause of a poor printer ... it is the cause of liberty ... the liberty, both of exposing and opposing arbitrary power by speaking and writing truth.

"Let us at least do our duty, and like wise men (who value freedom) use our utmost care to support liberty, the only bulwark against lawless power, which in all ages has sacrificed to its wild lust and boundless ambition the blood of the best men that ever lived."

Today, of all days, it is well to remember these inspiring words.

Zenger was acquitted and the doctrine of the freedom of the press firmly established in the United States.

THE TRIAL

OF

JOHN PETER ZENGER,

OF NEW YORK, PRINTER:

Who was charged with having printed and published a LIBEL against the Government; and acquitted.

WITH

A NARRATIVE OF HIS CASE.

L O N D O N :

Printed for J. ALMON, opposite Burlington-House, Piccadilly.

MDCCLXV.

Price One Shilling.

A NARRATIVE

Of the CASE of

JOHN PETER ZENGER,

Printer of the New-York Weekly Journal.

Senger's first News-paper was printed, Nov. 5, 1733, and he continued printing and publishing them, to the public satisfaction, till the January following; when the chief justice was pleased to animadvert upon the doctrine of libels, in a long charge given in that term to the grand jury, of which Zenger's papers was the principal object; and afterwards on the third Tuesday of October, 1734, was again pleased to harangue the grand jury, in the following words:

"I shall observe concerning libels; that they are arrived to that height, that they call loudly for your animadversion; it is high time to put a stop to them; for at the rate things are now carried on, when all order and government are endeavoured to be trampled on, and reflections are cast upon persons of all degrees, must not these things end in sedition, if not timely prevented? Lenity, you have seen, will not avail; it becomes you then to enquire after the offenders, that we may, in a due course of law, be enabled to punish them. If you, gentlemen, do not interpose, consider whether the ill consequences that may arise from any disturbances of the public peace, may not in part lie at your door?"

But the grand jury not indicting Zenger, as was expected, the gentlemen of the council (1) took four of his news-papers

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(1) As some of our readers may perhaps be unacquainted with the form of government in New-York, we must inform them, that in that province, as well as most of the British plantations in America, the form of government is the very same with that in England; as it consists of a governor, a council, and an assembly. The governor is named by the king, and represents the sovereign within the province of

into consideration, and having by their resolution declared them to be FALSE, SCANDALOUS, MALICIOUS AND SEDITIOUS LIBELS, ORDERED them to be burnt by the hands of the common hangman; but when the order came to be read in the court of quarter sessions, the aldermen would not suffer the hangman to burn them, and made the following protest against it, which was read:

"Whereas this court conceives, they are only to be commanded by the King's manadatory writs, authorized by law, to which they conceive they have the right of shewing cause why they don't obey them, if they believe them improper to be

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which he is appointed governor; the council consists of a certain number of members, all of whom are named by the king, and resembles the house of lords in England, being for that reason sometimes called the upper-house of assembly; and the assembly consists of a number of representatives chosen by the people in their several parishes or districts, resembling the house of commons in England, and for that reason are often called the lower house of assembly. These three branches of the legislature have, within their province, the same powers and privileges that the king, lords and commons have here at home, and their acts have the same force, if not disapproved by his majesty; consequently a resolution of either house of assembly meets generally with the same respect from the people within the province, that a resolution of either house of parliament does in England; but in this case of Zenger's tho' the council had by their resolution declared papers published by him to be false, scandalous, malicious and seditious libels, as the jury upon his trial were upon their oaths, and thereby bound to deliver their own opinion, and not that of the council, they thought themselves obliged to acquit the prisoner, by returning a verdict, not guilty; which is the verdict every jury-man is in conscience bound to return, if he thinks that the prisoner is not guilty of the crime charged in the indictment or information.

obeyed, or by orders, which have some known laws to authorize them; and as this court conceives this order to be no mandatory writ warranted by law, nor knows of any law that authorizes the making of the order aforesaid; so they think themselves under no obligation to obey it; which obedience, they think, would be in them, the opening a door for arbitrary commands, which, when once opened, they know not what dangerous consequences may attend it. Wherefore, this court conceives itself bound in duty (for the preservation of the rights of this corporation, and, as much as they can, of the liberty of the press, and the people of the province, since an assembly of the province, and several grand juries, have refused to meddle with the papers, when applied to by the council) to protest against the order aforesaid, and to forbid all the members of this corporation to pay any obedience to it, until it be shewn to this court, that the same is authorized by some known law, which they neither know nor believe that it is."

The sheriff then moved, that the court would direct the hangman to perform the order of the council; to which it was answered, 'That, as he was an officer of the corporation, they would give no such order. Whereupon the sheriff ordered his own negro to burn them, and the officers of the garrison attended.

On Sunday November 17, Zenger was taken up and imprisoned by virtue of a warrant in these words:

"At a council held at Fort-George in New York, the 2d day of November, 1734.

PRESENT.

His excellency William Cosby, captain-general and governor in chief, &c.

Mr. Clarke,	Mr. Harrison	Mr. Livingston,
Mr. Kennedy,	The chief justice,	Mr. Cortland,
Mr. Lane,	Mr. Horsmanden,	

"It is ordered, that the sheriff for the city of New-York do forthwith take and apprehend John Peter Zenger, for printing and publishing several seditious libels,dispersed throughout his journals or news-papers, entitled, The New-York Weekly Journal, containing the freshest advices,foreign and domestic; as having in them many things, tending to raise factions and tumults among the people of this province, inflaming their minds with contempt of his majesty's government, and greatly disturbing the peace thereof; and, upon his taking the said John Peter Zenger, to commit him to the prison or common gaol of the said city and county.

Fred. Morris, D. Cl. Con."

By virtue of this warrant he was imprisoned several days; and illegally, as well as cruelly denied the use of pen, ink and paper, and the liberty of speech with any persons.--Upon his commitment, some friends soon got a habeas corpus to bring him before the chief justice, in order to his discharge or being bailed; on the return whereof, on Wednesday the 20th of November, his council delivered exceptions to the return, and the chief justice ordered them to be argued publickly at the city hall, on the Saturday following.

On Saturday the 23d of November, the said exceptions came to be argued, by James Alexander and William Smith, council for Zenger; and by Mr. Attorney-general and Mr. Warrel, council against him, in presence of some hundreds of the inhabitants; where his council (saving the benefit of exception to the illegality of the warrant) insisted, that he might be admitted to reasonable bail. And to shew, that it was his right to be so, they offered Magna Charta, the petition of Right 3 car. The habeas corpus act of 31 car. 2, which directs the sum in which bail is to be taken, to be, "according to the quality of the prisoner, and nature of the offence." Also 2d HAWKINS, Cap. 15, par. 5. in these words, "BUT JUSTICES MUST TAKE CARE, THAT, UNDER PRETENCE OF DEMANDING SUFFICIENT SECURITY, THEY DO NOT MAKE SO EXCESSIVE A DEMAND, AS IN EFFECT AMOUNTS TO A DENIAL OF BAIL; FOR THIS IS LOOKED ON AS A GREAT GRIEVANCE, AND IS COMPLAINED OF AS SUCH, BY 1. W. &. M. sess.

2d. BY WHICH IT IS DECLARED, That excessive bail ought not to be required. It was also shewn, that the seven bishops, who, in king James the IId's time, were charged with the like crime that Zenger stood charged with, were admitted to bail on their own recognizances, the archbishop in 200£. and each of the other six in 100£. each only. Sundry other authorities and arguments were produced and insisted on by council, to prove his right to be admitted to moderate bail, and to such bail as was in his power to give; and sundry parts of history they produced, to shew how much the requiring excessive bail had been resented by parliament. And in order to enable the court to judge what surety was in his power to give, he made affidavit, that (debts paid) he was not worth forty pounds, the tools of his trade and wearing apparel excepted.

Some warm expressions (to say no worse of them) were dropped on this occasion, sufficiently known and resented by the auditory. But upon the whole, it was ordered, That he might be admitted to bail, himself in 400£. with two sureties each in 200£. and that he should be remanded till he gave it. And as this was ten times more than was in his power to counter secure any person in giving bail for him, he conceived he could not ask any to become his bail on these terms; and therefore he returned to gaol, where he lay until Tuesday the 28th of January 1735, being the last day of that term; and the grand jury having found nothing against him, he expected to have been discharged from his imprisonment; but these hopes proved vain; for the attorney-general then charged him by information, for printing and publishing parts of his journals, No. 13. and 23. as being false, scandalous, malicious, and seditious.

To this information his council appeared, and offered exceptions, leaving a blank for inserting the judges commissions, which the court were of opinion not to receive till those blanks were filled up. In the succeeding vacation the judges gave copies of their commissions; and on Tuesday the 15th of April 1735, the first day of the succeeding term, his council offered these exceptions; which were as follow:

The attorney-general,)
v.) On information for a misdemeanor.
John Peter Zenger.)

"Exceptions humbly offered by John Peter Zenger, to the honourable James De Lancey, Esq; to judge in this cause.

"The defendant comes and prays hearing of the commission, by virtue of which the honourable James De Lancey, Esq; claims the power and authority to judge in this cause, and it is read to him in these words:

"George the Second, by the grace of God, king of Great-Britain, France and Ireland, king defender of the faith, &c. To our trusty and well-beloved James De Lancy, Esq; we reposing special trust and confidence in your integrity, ability and learning, have assigned, constituted and appointed, and we do by these presents assign, constitute and appoint you the said James De Lancey, Esq; to be chief justice in and over our province of New-York, in America, in the room of Lewis Morris, Esq; giving and by these presents granting unto you full power and lawful authority, to hear, try, and determine all pleas whatsoever, civil, criminal and mixed, according to the laws, statutes and customs of our kingdom of England, and the laws and usages of our said province of New York, not being repugnant thereto, and executions of all judgments of the said court to award, and to make such rules and orders in the said court as may be found convenient and useful, and as near as may be agreeable to the rules and orders of our courts of King's Bench, Common Pleas, and Exchequer in England. To have, hold and enjoy the said office or place of chief justice in and over our said province, with all and singular the rights, and privileges,profits and advantages, sallaries, fees and perquisites unto the said place belonging, or in any ways appertaining,in as full and ample manner as any person heretofore chief justice of our said province hath held and enjoyed, or of right ought to have held and enjoyed the same, to you the said James De Lancey, Esq; for and DURING OUR WILL AND PLEASURE. In testimony whereof we have caused these our letters to be made patent, and the great seal of our province of

New-York, to be hereunto affixed. Witness our trusty and well-beloved William Cosby, Esq; our captain-general and governor in chief of our provinces of New-York, New-Jersey, and the territories thereon depending in America, vice admiral of the same, and colonel in our army, at Fort-George in New-York, the twenty-first day of August, in the seventh year of our reign, Anno Domini, 1733."

Which being read and heard, the said John Peter Zenger, by protestation, not confessing or submitting to the power of any other person to judge in this cause, doth except to the power of any other person to judge in this cause, doth except to the power of the honourable James De Lancey,Esq; aforesaid, to judge in this cause, by virtue of the commission aforesaid, for these reasons, viz.

"1st. For that the authority of a judge of the King's-Bench, in that part of Great Britain called England, by which the cognizance of this cause is claimed, is by the said commission granted to the honourable James De Lancey, Esq; aforesaid, only DURING PLEASURE; whereas that authority (by a statute in that case made and provided) ought to be granted DURING GOOD BEHAVIOUR.

"2d. For that, by the said commission, the jurisdiction and authority of a justice of the court of Common-Pleas at Westminster, in that part of Great Britain called England, is granted to the said James De Lancey, esq; which jurisdiction and authority cannot be granted to, and exercised by, any one of the justices of the King's-Bench.

"3d. For that the form of the said commission is not founded on or warranted by the common law, or any statute of England, or of Great-Britain, or any act of assembly in this colony.

"4th. For that it appears by the commission aforesaid, that the same is granted under the seal of this colony, by his excellency William Cosby, esq; governor thereof; and it appears not, that the same was granted, neither was the same

granted, by and with the advice and consent of his majesty's council of this colony; without which advice and consent, his excellency could not grant the same.

"Wherefore, and for many other defects in the said commission, this defendant humbly hopes, that the hon. James De Lancey, esq; will not take cognizance of this cause, by virtue of the commission aforesaid.

(James Alexander ,
Signed(William Smith."
(

The exceptions to the commission of the hon. Frederick Philipse, esq; the second justice, were the same with the foregoing; his commission having the same defects.

Tuesday the 15th of April, 1735, Mr. Alexander offered the above exceptions to the court, and prayed that they might be filed. Upon this the chief justice said to Mr. Alexander and Mr. Smith, that they ought well to consider the consequences of what they offered; to which both answered, that they had well considered what they offered, and all the consequences. And Mr. Smith added, that he was so well satisfied of the right of the subject to take an exception to the commission of a judge, if he thought such commission illegal, that he durst venture his life upon that point. As to the validity of the exceptions then offered, he said, he took that to be a second point; but was ready to argue them both, if their honours were pleased to hear him. To which the chief justice replied, that he would consider the exceptions in the morning; and ordered the clerk to bring them to him.

Wednesday, the 16th of April, 1735, The chief justice delivered one of the exceptions to the clerk, and justice Philipse the other, upon which Mr. Smith arose and asked the judges, whether their honours would hear him upon these two points. 1st, That the subject has a right to take such exceptions, if they judged the commission illegal. 2dly. That the exceptions tendered were legal and valid. To which the

chief justice said, that they would neither hear nor allow the exceptions; for (said he) you thought to have gained a great deal of applause and popularity by opposing this court, as you did the court of Exchequer; but you have brought it to that point, that either we must go from the bench, or you from the bar; therefore we exclude you and Mr. Alexander from the bar; and delivered a paper to the clerk, and ordered it to be entered, which the clerk entered accordingly, and returned the paper to the chief justice; after which, the chief justice ordered the clerk to read publicly what he had written; an attested copy whereof follows:

"At a supreme court of judicature held for the province of New-York, at the city-hall of the city of New-York, on Wednesday, the 16th day of April, 1735.

PRESENT.

The hon. James De Lancey, esq; chief justice.
The hon. Frederick Philipse, esq; second justice.

"James Alexander, esq; and William Smith, attornies of this court, having presumed (notwithstanding they were forewarned by the court of their displeasure if they should do it) to sign, and having actually signed, and put into court, exceptions, in the name of John Peter Zenger; thereby denying the legality of the judges their commissions (tho' in the usual form) and the being of this supreme court. It is therefore ordered, that for the said contempt, the said James Alexander, and William Smith, be excluded from any farther practice in this court; and that their names be struck out of the roll of attornies of this court.

per Cur'. James Lyne, Cl."

Mr. Alexander observed to the court, upon reading the above order, that they were mistaken in their wording of it, because the exceptions were only to their commissions, and not to the being of the court, as is therein alleged; and prayed that the order might be altered accordingly. The chief jus-

tice said, they conceived the exceptions were against the being of the court. Both Mr. Alexander and Mr. Smith denied that they were, and prayed the chief justice to point to the place that contained such exceptions; and further added, that the court might well exist, tho' the commissions of all the judges were void; which the chief justice confessed to be true; and therefore they prayed again, that the order in that point might be altered; but it was denied.

Upon this exclusion of Zenger's council, he petitioned the court to order council for his defence, who thereon appointed John Chambers, esq; who pleaded Not Guilty for him to the information. Mr. Chambers moved, that a certain day in the next term might be appointed for his trial, and for a struck jury; whereupon his trial was ordered to be on Monday the 4th of August, and the court would consider till the first day of the next term, whether he should have a struck jury or not, and ordered that the sheriff should in the mean time, at Zenger's charge, return the freeholders book.

On the 29th of July, 1735, being the first day of next term, the court were of opinion, That Zenger was entituled to have a struck jury.

Accordingly, that evening at five of the clock, some of his friends attended the clerk, for striking the jury; when, to their surprize, the clerk, instead of producing the freeholders book, to strike the jury out of it, in their presence, as usual, produced a list of forty-eight garbled persons, whom, he said, he had taken out of the freeholders book. Zenger's friends told him, that a great number of these persons were not freeholders; that others were persons holding commissions and offices at the governor's pleasure; that others being of the late displaced magistrates of this city, must be supposed to have resentment against the prisoner, for what he had printed concerning them; that others were the governor's baker, taylor, shoemaker, candle-maker, joiner, &c. that there would not remain a jury, if they struck out all the exceptionable men; and, according to the custom, they had only a right to strike out 12.

But, finding no arguments could prevail with the clerk to strike the jury as usual, Mr. Chambers applied to the court, next morning, and the court, upon his motion, ordered, That the 48 should be struck out of the freeholders book as usual, in the presence of the parties, and that the clerk should hear objections to persons proposed to be of the 48, and allow of such exceptions as were just. In pursuance of that order, a jury was that evening struck, to the satisfaction of both parties.

THE

TRIAL

of

JOHN PETER ZENGER,

August 4, 1735.

At a supreme court of judicature held for the province of New-York,

PRESENT,

The Hon. James De Lancey, Esq; chief justice.
The Hon. Frederick Philipse, Esq; second justice.

The court being seated, Zenger was brought in.

Mr. Chambers, council for the defendant. I humbly move your honours that we may have justice done by the sheriff, and that he may return the names of the jurors in the same order they were struck.

Chief Justice. How is that? Are they not so returned?

Mr. Ch. No, they are not: for some of the names that were last set down in the pannel, are now placed first.

Ch. J. Make out that, and you shall be righted.

Mr. Ch. I have the copy of the pannel in my hand, as the jurors were struck, and if the clerk will produce the original signed by Mr. Attorney and myself, your honour will see our complaint is just.

Ch. J. Clerk, is it so? Look upon that copy: is it a true copy of the pannel as it was struck?

Clerk. Yes, I believe it is.

Ch. J. How came the names of the jurors to be misplaced in the pannel?

Sheriff. I have returned the jurors in the same order in which the clerk gave them to me.

Ch. J. Let the names of the jurors be ranged in the order they were struck, agreeable to the copy here in court.

Which was done accordingly. And the jury, whose names were as follows, were called and sworn.

Hermanus Rutgers,	Egbert van Borsom,
Stanly Holmes,	Thomas Hunt, Foreman.
Edward Man,	Benjamin Hildreth,
John Bell,	Abraham Keteltas,
Samuel Weaver,	John Goelet,
Andries Marsehalk,	Hercules Wendover,

Mr. Attorney-general opened the information, which was as follows:

"New-York, supreme court.

Of the term of January, in the eighth year of the reign of our sovereign lord king George IId, &c.

New-York, Ss. BE it remembered, that Richard Bradley, esq; attorney-general of our sovereign lord the king, for the province of New-York, who for our said lord the king in this part prosecutes, in his own proper person comes here into the court of our said lord the king, and for our said lord the king gives the court here to understand and be informed, -- that John Peter Zenger, late of the city of New-York, Printer, (being a seditious person, and a frequent printer and publisher of false news and seditious libels, and wickedly and maliciously devising the government of our

said lord the king of this his majesty's province of New-York, under the administration of his excellency William Cosby, Esq; captain-general and governor in chief of the said province, to traduce, scandalize and vilify; and his excellency the said governor, and the ministers and officers of our said lord the king of and for the said province to bring into suspicion and the ill opinion of the subjects of our said lord the king residing within the said province) the twenty-eighth day of January, in the seventh year of the reign of our sovereign lord George the Second, by the grace of God of Great-Britain, France and Ireland, king, defender of the faith, &c. at the city of New-York, did falsly, seditiously and scandalously print and publish, and cause to be printed and published, a certain false, malicious, seditious, scandalous libel, intituled, the New-York Weekly Journal, containing the freshest advices foreign and domestic (1); in which libel (of and concerning his excellency the said governor, and the ministers and officers of our said governor, and the ministers and officers of our said lord the king, of and for the said province) among other things therein contained, are these words: 'Your appearance in print at last gives a pleasure to many, tho' most wish you had come fairly into the open field, and not appeared behind retrenchments made of the supposed laws against libelling, and of what other men have said and done before; these retrenchments, gentlemen, may soon be shewn to you and all men to be weak, and to have neither law nor reason for their foundation, so cannot long stand you in stead: therefore, you had much better as yet leave them, and come to what the people of this city and province (the city and province of New-York meaning) think are the points in question (to wit) They (the people of the city and province of New-York meaning) think, as matters now stand, that their LIBERTIES AND PROPERTIES are precarious, and that SLAVERY is like to be intailed on them and their posterity, if some past things be not amended, and this they collect from many past proceedings.' (Meaning many of the past proceedings

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(1) The Passages quoted in this information are from only two of Zenger's newspapers.

of his excellency the said governor, and of the ministers and officers of our said lord the king, of and for the said province.) And the said attorney-general of our said lord the king, for our said lord the king, likewise gives the courts here to understand and be informed, That the said John Peter Zenger afterwards (to wit) the eighth day of April, in the seventh year of the reign of our said lord the king, at the city of New-York aforesaid, did falsly, seditiously and scandalously print and publish, and cause to be printed and published, another false, malicious, seditious, and scandalous libel, intituled, The New-York Weekly Journal, containing the freshest advices foreign and domestic. In which libel, (of and concerning the government of the province of New-York, and of and concerning his excellency the said governor, and the ministers and officers of our said lord the king, of and for the said province) among other things therein contained, are these words, 'One of our neighbours (one of the inhabitants of New-Jersey meaning) being in company, observing the strangers (some of the inhabitants of New-York meaning) full of complaints, endeavoured to persuade them to remove into Jersey; to which it was replied, that would be leaping out of the frying-pan into the fire; for, says he, we both are under the same governor, (his excellency the said governor meaning) and your assembly have shewn with a witness what is to be expected from them: one that was then moving to Pensilvania, (meaning one that was then removing from New-York, with intent to reside at Pensilvania) to which place it is reported several considerable men are removing (from New-York meaning) expressed, in terms very moving, much concern for the circumstances of New-York, (the bad circumstances of the province and the people of New-York meaning) seemed to think them very much owing to the influence that some men (whom he called tools) had in the administration, (meaning the administration of government of the said province of New-York) said he was now going from them, and was not to be hurt by any measures they should take, but could not help having some concern for the welfare of his countrymen, and should be glad to hear that the assembly (meaning the general assembly of the province of New-York) would exert themselves as became them, by shewing that they have the interest of their country more at heart, than

the gratification of any private view of any of their members, or being at all affected by the smiles or frowns of a governor, (his excellency the said governor meaning) both which ought equally to be despised, when the interest of their country is at stake. You, says, he, complain of the lawyers, but I think the law itself is at an end, WE (the people of the province of New-York meaning) SEE MEN'S DEEDS DESTROYED, JUDGES ARBITRARILY DISPLACED, NEW COURTS ERECTED WITHOUT CONSENT OF THE LEGISLATURE (within the province of New-York meaning) BY WHICH IT SEEMS TO ME, TRIALS BY JURIES ARE TAKEN AWAY WHEN A GOVERNOR PLEASES, (His excellency the said governor meaning) MEN OF KNOWN ESTATES DENIED THEIR VOTES, CONTRARY TO THE RECEIVED PRACTICE, THE BEST EXPOSITOR OF ANY LAW: Who is then in that province (meaning the province of New-York) that call (can call meaning) any thing his own, or enjoy any liberty (liberty meaning) longer than those in the administration (meaning the administration of government of the said province of New-York) will condescend to let them do it, for which reason I have left it, (the province of New-York meaning) as I believe more will." To the great disturbance of the peace of the said province of New-York, to the great scandal of our said lord the king, of his excellency the said governor, and of all others concerned in the administration of the government of the said province, and against the peace of our sovereign lord the king, his crown and dignity, &c. Whereupon the said attorney-general of our said lord the king, for our said lord the king, prays the advisement of the court here, in the premises, and the due process of the law, against him the said John Peter Zenger, in this part to be done, to answer to our said lord the king of and in the premises, &c.

R. Bradley, attorney-general."

Mr. Ch. To this information the defendant has pleaded not guilty, and we are ready to prove it.

(Mr. Chambers was not pleased to favour Zenger with his notes, so that for fear of doing him injustice, his arguments cannot be set down. But here Mr. Chambers set forth very clearly the nature of a libel, the great allowances that ought

to be made for what men speak or write: That in all libels there must be some particular persons so clearly pointed out, that no doubt must remain about who is meant: That he was in hopes Mr. Attorney would fail in his proof, as to this point; and therefore desired that he would go on to examine his witnesses.

Then Mr. Hamilton, who, at the request of some of Zenger's friends, was so kind as to come from Philadelphia to assist him on his trial, spoke.

Mr. Hamilton. May it please your honour; I am concerned in this cause on the part of Mr. Zenger, the defendant. The information against my client was sent me, a few days before I left home, with some instructions to let me know how far I might rely upon the truth of those parts of the papers set forth in the information, and which are said to be libellous. And tho' I am perfectly of opinion with the gentleman who has just now spoke, on the same side with me, as to the common course of proceedings, I mean in putting Mr. Attorney upon proving, that my client printed and published those papers mentioned in the information; yet I cannot think it proper for me (without doing violence to my own principles) to deny the publication of a complaint, which I think is the right of every free-born subject to make, when the matters so published can be supported with truth; and therefore I'll save Mr. Attorney the trouble of examining his witnesses to that point; and I do (for my client) confess, that he both printed and published the two news-papers set forth in the information; and I hope in so doing he has committed no crime.

Mr. Attorney. Then if your honour pleases, since Mr. Hamilton has confessed the fact, I think our witnesses may be discharged; we have no further occasion for them.

Mr. Hamilton. If you brought them here, only to prove the printing and publishing of these news-papers, we have acknowledged that, and shall abide by it.

(Here Zenger's journeyman and two sons (with several others subpoena'd by Mr.Attorney,to give evidence against him) were discharged, and there was silence in the court for some time.)

Mr. Ch. Justice. Well, Mr. Attorney, will you proceed?

Mr. Attorney. Indeed, Sir, as Mr. Hamilton has confessed the printing and publishing these libels, I think the jury must find a verdict for the king; for supposing they were true, the law says that they are not the less libellous for that; nay indeed, the law says their being true is an aggravation of the crime.

Mr. Hamilton. Not so neither, Mr. Attorney, there are two words to that bargain. I hope it is not our bare printing and publishing a paper, that will make it a libel: you will have something more to do, before you make my client a libeller; for the words themselves must be libellous, that is, "false, scandalous, and seditious," or else we are not guilty.

(As Mr. Attorney has not been pleased to favour us with his argument, which he read, or with the notes of it, we cannot take upon us to set down his words, but only to shew the book-cases he cited, and the general scope of his argument, which he drew from those authorities. He observed upon the excellency, as well as use of government, and the great regard and reverence, which had been constantly paid to it, both under the law and the gospel. That by government we were protected in our lives, religion, and properties; and that, for these reasons, great care had always been taken to prevent every thing that might tend to scandalize magistrates, and others concerned in the administration of the government, especially the supreme magistrate. And that there were many instances of very severe judgments, and of punishments inflicted upon such, as had attempted to bring the government into contempt; by publishing false and scurrilous libels against it, or by speaking evil and scandalous words of men in authority; to the great disturbance of the public peace. And to support this, he cited, 5 Coke 121. (It should be 125.) Wood's Instit.

430. 2 Lilly 168. 1 Hawkins 73. 11. 6. From these books he insisted, that a libel was a malicious defamation of any person, expressed either in printing or writing, signs or pictures, to asperse the reputation of one that is alive, or the memory of one that is dead; if he is a private man, the libeller deserves a severe punishment, but if it is against a magistrate or other public person, it is a greater offence; for this concerns not only the breach of the peace, but the scandal of the government; for what greater scandal of the government can there be, than to have corrupt or wicked magistrates to be appointed by the king, to govern his subjects under him? And a greater imputation to the state cannot be, than to suffer such corrupt men to sit in the sacred seat of justice, or to have any concern in the administration of justice; and from the same books Mr. Attorney insisted, that whether the person defamed is a private man or a magistrate, whether living or dead, whether the libel is true or false, or if the party against whom it is made is of good or evil fame, it is nevertheless a libel: for in a settled state of government, the party grieved ought to complain for every injury done him, in the ordinary course of the law. And as to its publication, the law had taken so great care of mens' reputations, that if one maliciously repeats, or signs it, in the presence of another, or delivers the libel or a copy of it over, to scandalize the party, he is to be punished as a publisher of a libel. He said it was likewise evident, that libelling was an offence against the law of God. Acts xxiii. 5. "Then said Paul, I wist not, brethren, that he was the high-priest; for it is written, thou shalt not speak evil of the ruler of the people." 2 Pet. ii. 10. "Despise government, presumptuous are they, self-willed, they are not afraid to speak evil of dignities, &c." He then insisted, that it was clear, both by the law of God and man, That it was a very great offence to speak evil of, or to revile, those in authority over us; and that Mr. Zenger had offended in a most notorious and gross manner, in scandalizing his excellency our governor, who is the king's immediate representative, and the supreme magistrate of this province: for can there be anything more scandalous said of a governor than what is published in those papers? Nay, not only the governor, but both the coun-

cil and assembly are scandalized; for there it is plainly said, That "As matters now stand, their liberties and properties are precarious, and that slavery is like to be entailed on them and their posterity." And then again Mr. Zenger says, "The assembly ought to despise the smiles or frowns of a governor: That he thinks the law is at an end: That we see Mons' deeds destroyed, judges arbitrarily displaced, new courts erected without consent of the legislature: And that it seems trials by juries are taken away when a governor pleases; That none can call any thing their own, longer than those in the administration will condescend to let them do it." -- And Mr. Attorney added, that he did not know what could be said in defence of a man, who had so notoriously scandalized the governor and principal magistrates and officers of the government, by charging them with depriving the people of their rights and liberties, and taking away trial by juries, and in short, putting an end to the law itself. -- If this was not a libel, he said, he did not know what was one. Such persons as will take those liberties with governors and magistrates, he thought ought to suffer, for stirring up sedition and discontent among the people. And concluded by saying, That the government had been very much traduced and exposed by Mr. Zenger, before he was taken notice of: That at last it was the opinion of the governor and council, that he ought not to be suffered to go on to disturb the peace of the government, by publishing such libels against the governor and the chief persons in the government; and therefore they had directed this prosecution, to put a stop to this scandalous and wicked practice, of libelling and defaming his majesty's government and disturbing his majesty's peace.)

Mr. Chambers then summed up to the jury, observing, with great strength of reason, on Mr. Attorney's defect of proof, that the papers in the information were false, malicious, or seditious, which was incumbent on him to prove to the jury, and without which they could not on their oaths say, That they were so, as charged.

Mr. Hamilton. May it please your honour; I agree with Mr. Attorney, that government is a sacred thing; but I differ

very widely from him when he would insinuate, that the just complaints of a number of men, who suffer under a bad administration, is libelling that administration. Had I believed that to be law, I should not have given the court the trouble of hearing any thing I could say in this cause. I own, when I read the information, I had not the art to find out (without the help of Mr. Attorney's inuendos) that the governor was the person meant in every period of that news-paper; and I was inclined to believe, that they were wrote by some, who, from an extraordinary zeal for liberty, had misconstrued the conduct of some persons in authority into crimes; and that Mr. Attorney, from his too great zeal for power, had exhibited this information, to correct the indiscretion of my client; and at the same time, to shew his superiors the great concern he had, lest they should be treated with any undue freedom. But from what Mr. Attorney has just now said, to wit, That this prosecution was directed by the governor and council; and from the extraordinary appearance of people of all conditions, which I observe in court upon this occasion, I have reason to think, that those in the administration have by this prosecution something more in view, and that the people believe they have a good deal more at stake, than I apprehend; and therefore, as it is become my duty, to be both plain and particular in this cause, I beg leave to bespeak the patience of the court.

I was in hopes, as that terrible court, where those dreadful judgments were given, and that law established, which Mr. Attorney has produced for authorities to support this cause, was long ago laid aside, as the most dangerous court to the liberties of the people of England, that ever was known in that kingdom; that Mr. Attorney, knowing this, would not have attempted to set up a star-chamber here, nor to make their judgments a precedent to us; for it is well known, that what would have been judged treason in those days for a man to speak, I think has since not only been practised as lawful, but the contrary doctrine has been held to be law.

In Brewster's case, for printing, That the subjects might defend their rights and liberties by arms, in case the king

should go about to destroy them, he was told by the chief-justice, that it was a great mercy he was not proceeded against for his life; for that to say, the king could be resisted by arms in any case whatsoever, was express treason. And yet we see, since that time, Dr. Sacheverel was sentenced in the highest court of Great-Britain, for saying, That such a resistance was not lawful. Besides, as times have made very great changes in the laws of England, so, in my opinion, there are many good reasons that places should do so too.

Is it not surprising to see a subject, upon his receiving a commission from the king to be a governor of a colony in America, immediately imagining himself to be vested with all the prerogatives belonging to the sacred person of his prince? and, which is yet more astonishing, to see that a people can be so wild as to allow of and acknowledge those prerogatives and exemptions, even to their own destruction? Is it so hard a matter to distinguish between the majesty of our sovereign, and the power of a governor of the plantations? Is not this making very free with our prince, to apply that regard, obedience and allegiance to a subject which is due only to our sovereign? And yet in all the cases which Mr. Attorney has cited, to shew the duty and obedience we owe to the supreme magistrate, it is the king which is there meant and understood, though Mr. Attorney is pleased to urge them as authorities to prove the heinousness of Mr. Zenger's offence against the governor of New-York. The several plantations are compared to so many large corporations, and perhaps not improperly; and can any one give an instance, that the mayor, or head of a corporation, ever put in a claim to the sacred rights of majesty? Let us not (while we are pretending to pay a great regard to our prince and his peace) make bold to transfer that allegiance to a subject, which we owe to our king only. What strange doctrine is it, to press every thing for law here which is so in England: I believe we should not think it a favour, at present at least, to establish this practice. In England so great a regard and reverence is had to the judges, (1)

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(1) C. 3 Inst. 140.

that, if any man strikes another in Westminster-Hall, while the judges are sitting, he shall lose his right-hand, and forfeit his land and goods, for so doing. And tho' the judges here claim all the powers and authorities within this government, that a court of King's-bench has in England; yet I believe Mr. Attorney will scarcely say, that such a punishment could be legally inflicted on a man for committing such an offence, in the presence of the judges sitting in any court within the province of New-York. The reason is obvious; a quarrel or riot in New-York cannot possibly be attended with those dangerous consequences that it might in Westminster-hall; nor (I hope) will it be alledged, that any misbehaviour to a governor in the plantations will, or ever ought to be, judged of or punished, as a like undutifulness would be to our sovereign. From all which, I hope Mr. Attorney will not think it proper to apoly his law-cases (to support the cause of his governor) which have only been judged where the king's safety or honour was concerned. It will not be denied, but that a freeholder in the province of New-York has as good a right to the sole and separate use of his lands, as a freeholder in England, who has a right to bring an action of trespass against his neighbour, for suffering his horse or cow to come and feed upon his lands or eat his corn, whether inclosed or not inclosed; and yet I believe it would be looked upon as a strange attempt, for one man here to bring an action against another, whose cattle and horses feed upon his grounds not inclosed, or indeed for eating and treading down his corn, if that were not inclosed. Numberless are the instances of this kind that might be given, to shew, that what is good law at one time and in one place, is not so at another time and in another place; so that I think, the law seems to expect, that in these parts of the world men should take care, by a good fence, to preserve their property from the injury of unruly beasts; and perhaps there may be as good reason why men should take the same care, to make an honest and upright conduct a fence and security against the injury of unruly tongues.

Mr. Attorney. I don't know what the gentleman means, by comparing cases of freeholders in England with the freeholders here. What has this case to do with actions of trespass, or

men's fencing their grounds? The case before the court is, whether Mr. Zenger is guilty of libeling his excellency the governor of New-York, and indeed the whole administration of the government? Mr. Hamilton has confessed the printing and publishing; and I think nothing is plainer, than that the words in the information are scandalous, and tend to sedition, and to disquiet the minds of the people of this province; and if such papers are not libels, I think it may be said, there can be no such thing as a libel.

Mr. Hamilton. May it please your honour, I cannot agree with Mr. Attorney: for though I freely acknowledge, that there are such things as libels, yet I must insist at the same time, that what my client is charged with is not a libel: and I observed just now, that Mr. Attorney, in defining a libel, made use of the words, scandalous, seditious, and tend to disquiet the people; but (whether with design or not I will not say) he omitted the word false.

Mr. Attorney. I think I did not omit the word false: but it has been said already, that it may be a libel, notwithstanding it may be true.

Mr. Hamilton. In this I must still differ with Mr. Attorney; for I depend upon it, we are to be tried upon this information now before the court and jury, and to which we have pleaded not guilty; and by it we are charged with printing and publishing a certain false, malicious, seditious and scandalous libel. This word False must have some meaning, or else how came it there? I hope Mr. Attorney will not say, he put it there by chance, and I am of opinion his information would not be good without it. But to shew that it is the principal thing which, in my opinion, makes a libel, I put the case, the information had been for printing and publishing a certain true libel, would that be the same thing? or could Mr. Attorney support such an information by any precedent in the English law? No; the falsehood makes the scandal, and both make the libel. And to shew the court that I am in good earnest, and to save the court's time, and Mr. Attorney's trouble, I will agree, that if he can prove the facts charged upon us, to

be false, I'll own them to be scandalous, seditious, and a libel. So the work seems now to be pretty much shortened, and Mr. Attorney has now only to prove the words false, in order to make us guilty.

Mr. Attorney. We have nothing to prove; you have confessed the printing and publishing; but if it was necessary (as I insist it is not) how can we prove a negative? But I hope some regard will be had to the authorities that have been produced; and that, supposing all the words to be true, yet that will not help them. Chief-justice Holt, in his charge to the jury, in the case of Tutchin, made no distinction, whether Tutchin's papers were true or false; and as chief-justice Holt has made no distinction in that case, so none ought to be made here; nor can it be shewn in all that case, there was any question made about their being false or true.

Mr. Hamilton. I did expect to hear that a negative cannot be proved; but every body knows there are many exceptions to that general rule; for if a man is charged with killing another, or stealing his neighbour's horse; if he is innocent in the one case, he may prove the man, said to be killed, to be really alive; and the horse, said to be stolen, never to have been out of his master's stable, &c. and this I think is proving a negative. But we will save Mr. Attorney the trouble of proving a negative, and take the ONUS PROBANDI upon ourselves, and prove those very papers that are called libels to be true.

Mr. Ch. Justice. You cannot be admitted, Mr. Hamilton, to give the truth of a libel in evidence; a libel is not to be justified; for it is nevertheless a libel that it is true.

Mr. Hamilton. I am sorry the court has so soon resolved on that piece of law; I expected first to have been heard to that point. I have not, in all my reading, met with an authority that says, we cannot be admitted to give the truth in evidence, upon an information for a libel.

Mr. Ch. Justice. The law is clear, That you cannot justify a libel.

Mr. Hamilton. I own that, may it please your honour, to be so; but, with submission, I understand the word (Justify) there, to be a justification by plea, as it is in the case upon an indictment for murder, or an assault and battery; there the prisoner cannot justify, but plead not guilty; yet it will not be denied but he may be, and always is, admitted to give the truth of the fact, or any other matter, in evidence, which goes to his acquittal; as in murder he may prove it was in defence of his life, his house, &c. and in assault and battery, he may give in evidence that the other party struck first, and in both cases he will be acquitted. And in this sense I understand the word Justify, when applied to the case before the court.

Mr. Ch. Justice. I pray shew that you can give the truth of a libel in evidence.

Mr. Hamilton. I am ready, both from what I understand to be the authorities in the case, and from the reason of the thing, to shew that we may lawfully do so. But here I beg leave to observe, That informations for libels is a child, if not born, yet nursed and brought up to full maturity, in the court of a Star-chamber.

Mr. Ch. Justice. Mr. Hamilton you'll find yourself mistaken; for in Coke's Institutes you'll find informations for libels, long before the court of Star-chamber.

Mr. Hamilton. I thank your honour; that is an authority I did propose to speak to by-and-by; but as you have mentioned it, I'll read that authority now. I think it is in 3 Co. Inst. under title Libel; it is the case of John de Northampton, for a letter wrote to Robert de Ferrers, one of the king's privy-council; (1) concerning Sir William Scot, chief-justice, and his fellows; but it does not appear to have been upon information: and I have good grounds to say it was upon indictment, as was the case of Adam de Ravensworth, just mentioned before

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(1) Coke, 3 Inst. 174.

by lord Coke under the same title; and I think there cannot be a greater, at least a plainer, authority for us, than the judgment in the case of John de Northampton, which my lord has set down at large. ET QUIA PRAEDICTUS JOHANNES COGNOVIT DICTUM LITERAM PER SE SCRIPTAM ROBERTO DE FERRERS,QUI EST DE CONCILIO REGIS, QUA LITERA CONTINET IN SE NULLAM VERITATEM, &c. Now, Sir, by this judgment it appears the libellous words were utterly false, and there the falshood was the crime, and is the ground of that judgment; and is not that what we contend for? Do not we insist, that the falshood makes the scandal, and both make the libel? And how shall it be known, whether the words are libellous; that is, true or false, but by admitting us to prove them true, since Mr. Attorney will not undertake to prove them false? Besides, is it not against common sense, that a man should be punished in the same degree for a true libel (if any such thing could be) as for a false one? I know it is said, "That truth makes a libel the more provoking, and therefore the offence is the greater, and consequently the judgment should be the heavier." Well, suppose it were so,and let us agree for once, That "truth is a greater sin than falsehood;" yet, as the offences are not equal, and as the punishment is arbitrary, that is, according as the judges in their discretion shall direct to be inflicted; is it not absolutely necessary that they should know, whether the libel is true or false, that they may by that means be able to proportion the punishment? For, would it not be a sad case, if the judges, for want of a due information, should chance to give as severe a judgment against a man for writing or publishing a lie, as for writing or publishing a truth? And yet this (with submission) as monstrous and ridiculous as it may seem to be, is the natural consequence of Mr. Attorney's doctrine, That "truth makes a worse libel than falshood," and must follow from his not proving our papers to be false, or not suffering us to prove them to be true, But this is only reasoning upon the case; and I will now proceed to shew, what, in my opinion, will be sufficient to induce the court, to allow us to prove the truth of the words, which in the information are called libellous. And first, I think there cannot be a greater authority for us, than the judgment I just now mentioned,in the case of John de Northampton; and that was in early times,

and before the Star-chamber came to its fulness of power and wickedness. In that judgment, as I observed, the falshood of the letter which was wrote, is assigned as the very ground of the sentence: and agreeable to this it was urged by Sir Robert Sawyer (1), in the Trial of the Seven Bishops, That the falsity, the malice, and sedition of the writing, were all facts to be proved. But here it may be said, Sir Robert was one of the bishop's council, and his argument is not to be allowed for law: but I offer it only to shew, that we are not the first who have insisted, that to make a writing a libel it must be false. And if the argument of a council must have no weight, I hope there will be more regard shown to the opinion of a judge; and therefore I mention the words of justice Powel in the same trial, where he says (of the petition of the bishops, which was called a libel, and upon which they were prosecuted by information) That, "To make it a libel, it must be false and malicious, and tend to sedition;" and declared, "As he saw no falshood or malice in it, he was of opinion, that it was no libel." Now I should think this opinion alone, in the case of the king, and in a case which the king had so much at heart, and which to this day has never been contradicted, might be a sufficient authority, to entitle us to the liberty of proving the truth of the papers, which in the information are called false, malicious, seditious and scandalous. If it be objected, That the opinions of the other three judges were against him; I answer, That the censures the judgments of these men have undergone, and the approbation justice Powel's opinion, his judgment and conduct upon that trial has met with, and the honour he gained to himself, for daring to speak truth at such a time, upon such an occasion, and in the reign of such a king, are more than sufficient, in my humble opinion, to warrant our insisting on his judgment, as a full authority to our purpose; and it will lie upon Mr. Attorney to shew, that this opinion has, since that time, been denied to be law; or that justice Powel, who delivered it, has ever been condemned or blamed for it in any law-book extant at this day; and this I will venture to say Mr. Attorney cannot do. But to

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(1) State Trials, vol. iv.

make this point yet more clear, if any thing can be clearer, I will on our part proceed and shew, that in the case of Sir Samuel Barnadiston, his council, notwithstanding he stood before one of the greatest monsters that ever presided in an English court (judge Jefferies) insisted on the want of proof to the malice and seditious intent of the author of what was called a libel. And in the case of Tutchin, which seems to be Mr. Attorney's chief authority, that case is against him; for he was upon his trial put upon shewing the truth of his papers, but did not, at least the prisoner was asked, by the king's council,(1) whether he would say they were true?And as he never pretended, that they were true, the chief-justice was not to say so. But the point will still be clearer on our side from Fuller's case, for falsly and wickedly causing to be printed a false and scandalous libel, in which (amongst other things) were contained these words: "Mr. Jones has also made oath, That he paid 5000£. more by the late king's order, to several persons in places of trust, that they might complete my ruin, and invalidate me for ever. Nor is this all; for the said Mr. Jones will prove, by undeniable witness and demonstration, that he has distributed more than 180,000£. in eight years last past, by the French king's order, to persons in public trust in this kingdom." Here you see is a scandalous, and infamous charge against the late king; here is a charge, no less than high treason, against the men in public trust, for receiving money of the French king, then in actual war with the crown of Great-Britain;and yet the court were far from bearing him down with Star-chamber doctrine; to wit, That it was no matter, whether what he said was true or false; no; on the contrary, lord-chief-justice Holt asks Fuller, "Can you make it appear they are true? Have you any witnesses? You might have had subpoenas for your witnesses against this day. If you take upon you to write such things as you are charged with, it lies upon you to prove them true, at your peril. If you have any witnesses, I will hear them. How came you to write those books which are not true? If you have any witnesses, produce them. If you can offer any matter to prove

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(1) State Trials, vol. v. 445.

what you have wrote, let us hear it." Thus said, and thus did, that great man lord chief-justice Holt, upon a trial of the like kind with ours; and the rule laid down by him in this case is, "That he who will take upon him to write things, it lies upon him to prove them at his peril." Now, Sir, we have acknowledged the printing and publishing of those papers, set forth in the information, and (with the leave of the court) agreeable to the rule laid down by chief-justice Holt, we are ready to prove them to be true, at our peril.

Mr. Ch. Justice. Let us see the book.

(Here the court had the case under consideration a considerable time, and every one was silent.)

Mr. Ch. Justice. Mr. Attorney, you have heard what Mr. Hamilton has said, and the cases he has cited, for having his witnesses examined, to prove the truth of the several facts contained in the papers set forth in the information. What do you say to it?

Mr. Attorney. The law, in my opinion, is very clear: they cannot be admitted to justify a libel; for, by the authorities I have already read to the court, it is not the less a libel because it is true. I think I need not trouble the court with reading the cases over again: the thing seems to be very plain, and I submit it to the court.

Mr. Ch. Justice. Mr. Hamilton, the court is of opinion, you ought not to be permitted to prove the facts in the papers; these are the words of the book, "It is far from being a justification of a libel, that the contents thereof is true, or that the person upon whom it is made had a bad reputation, since the greater appearance there is of truth in any malicious invective, so much the more provoking it is."

Mr. Hamilton. These are Star-chamber cases, and I was in hopes, that practice had been dead with the court.

Mr. Ch. Justice. Mr. Hamilton, the court have delivered

their opinion,and we expect you will use us with good manners; you are not to be permitted to argue against the opinion of the court.

Mr. Hamilton. With submission, I have seen the practice in very great courts, and never heard it deemed unmannerly to ---

Mr. Ch. Justice. After the court have declared their opinion, it is not good manners to insist upon a point, in which you are over-ruled.

Mr. Hamilton. I will say no more at this time; the court I see is against us in this point; and that I hope I may be allowed to say.

Mr. Ch. Justice. Use the court with good manners, and you shall be allowed all the liberty you can reasonably desire.

Mr. Hamilton. I thank your honour. Then, gentlemen of the jury, it is to you we must now appeal; for witnesses to the truth of the facts we have offered, and are denied the liberty to prove; and let it not seem strange, that I apply myself to you in this manner; I am warranted so to do both by law and reason. The law supposes you to be summoned, out of the neighbourhood where the fact is alledged to be committed; and the reason of your being taken out of the neighbourhood is, because you are supposed to have the best knowledge of the fact that is to be tried, And were you to find a verdict against my client, you must take upon you to say, the papers referred to in the information, and which we acknowledge we printed and published, are false, scandalous, and seditious; but of this I can have no apprehension. You are citizens of New-York; you are really what the law supposes you to be, honest and lawful men; and, according to my brief, the facts which we offer to prove were not committed in a corner; they are notoriously known to be true; and therefore in your justice lies our safety. And as we are denied the liberty of giving evidence, to prove the truth of what we have published, I will beg leave to lay it down as a standing rule in such

cases, That the suppressing of evidence ought always to be taken for the strongest evidence; and I hope it will have that weight with you. But since we are not admitted to examine our witnesses, I will endeavour to shorten the dispute with Mr. Attorney, and to that end, I desire he would favour us with some standard definition of a libel, by which it may be certainly known, whether a writing be a libel, yea or not.

Mr. Attorney. The books, I think, have given a very full definition of a libel; they say (1) it is, In a strict sense, taken for a malicious defamation, expressed either in writing or printing, and tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and to expose him to public hatred, contempt, or ridicule. Par. 2.But it is said,That in a larger sense the notion of a libel may be applied to any defamation whatsoever, expressed either by signs or pictures; as by fixing up a gallows against a man's door, or by painting him in a shameful and ignominious manner. Par.3. And since the chief cause for which the law so severely punishes all offences of this nature, is the direct tendency of them to a breach of public peace, by provoking the parties injured, their friends and families, to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which of all others are most sensibly felt; and since the plain meaning of such scandal, as is expressed by signs or pictures, is as obvious to common sense, and as easily understood by every common capacity, and altogether as provoking as that which is expressed by writing or printing, why should it not be equally criminal? Par. 4. And from the same ground it seemeth also clearly to follow, That such scandal as is expressed in a scoffing and ironical manner, makes a writing as properly a libel, as that which is expressed in direct terms; as where a writing, in a taunting manner reckoning up several acts of public charity done by one, says, You will not play the Jew, nor the hypocrite, and so goes on in a strain of ridicule to insinuate, that what he did was owing to his vain-

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(1) Hawk, chap. 73. para. 1, & seq.

glory; or where a writing, pretending to recommend to one the characters of several great men for his imitation, instead of taking notice of what they are generally esteemed famous for, pitched on such qualities only which their enemies charge them with the want of, as by proposing such a one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar, &c. which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expresly done so.

Mr. Hamilton. Ay, Mr. Attorney; but what certain standard-rule have the books laid down, by which we can certainly know, whether the words or the signs are malicious? Whether they are defamatory? Whether they tend to the breach of the peace; and are a sufficient ground to provoke a man, his family or friends, to acts of revenge, especially those of the ironical sort of words? And what rule have you to know when I write ironically? I think it would be hard, when I say, such a man is a very worthy, honest gentleman, and of fine understanding, that therefore I meant he was a knave or a fool.

Mr. Attorney. I think the books are very full; it is said, in 1 Hark. p. 193, just now read, "That such scandal as is expressed in a scoffing and ironical manner, makes a writing as properly a libel, as that which is expressed in direct terms; as where a writing, in a taunting manner says, reckoning up several acts of charity done by one, says, You will not play the Jew or the hypocrite; and so goes on to insinuate, that what he did was owing to his vain-glory, &c. Which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expresly done so." I think nothing can be plainer or more full than these words.

Mr. Hamilton. I agree the words are very plain, and I shall not scruple to allow (when we are agreed that the words are false and scandalous, and were spoken in an ironical and scoffing manner, &c). that they are really libelous; but here

still occurs the uncertainty, which makes the difficulty to know, what words are scandalous, and what not; for you say, they may be scandalous, true or false; besides, how shall we know whether the words were spoke in a scoffing and ironical manner, or seriously? Or how can you know, whether the man did not think as he wrote? For, by your rule, if he did, it is no irony, and consequently no libel. But, under favour, Mr. Attorney, I think the same book, and the same section, will shew us the only rule by which all these things are to be known. The words are these; "Which kind of writing is as well UNDERSTOOD to mean only to upbraid the parties with the want of these qualities, as if they had directly and expresly done so." Here it is plain, the words are scandalous, scoffing, and ironical, only as they are UNDERSTOOD: I know no rule laid down in the books but this; I mean, as the words are UNDERSTOOD.

Mr. Ch. Justice. Mr. Hamilton, do you think it so hard to know when words are ironical,or spoke in a scoffing manner.

Mr. Hamilton. I own it may be known; but I insist, the only rule to know is, as I do or can understand them; I have no other rule to go by, but as I understood them.

Mr. Ch. Justice. That is certain. All words are libellous or not, as they are understood. Those who are to judge of the words, must judge whether they are scandalous or ironical, tend to the breach of the peace, or are seditious: there can be no doubt of it.

Mr. Hamilton. I thank your honour; I am glad to find the court of this opinion. Then it follows that those twelve men must understand the words in the information to be scandalous, that is to say,false; for I think it is not pretended they are of the ironical sort; and when they understand the words to be so, they will say we are guilty of publishing a false libel, and not other wise.

Mr. Ch. Justice. No, Mr. Hamilton; the jury may find thar Zenger printed and published those papers, and leave it

to the court to judge whether they are libellous; you know this is very common; it is in the nature of a special verdict, where the jury leave the matter of law to the court.

Mr. Hamilton. I know, may it please your honour, the jury may do so; but I do likewise know, they may do otherwise. I know they have a right beyond all dispute, to determine both the law and the fact, and where they do not doubt of the law, they ought to do so. This of leaving it to the judgment of the court, whether the words are libellous or not, in effect renders juries useless (to say no worse) in many cases; but this I shall have occasion to speak to by-and-by; and I will, with the court's leave, proceed to examine the inconveniences that must inevitably arise from the doctrines Mr. Attorney has laid down; and I observe, in support of this prosecution, he had frequently repeated the words taken from the case of Libel, Famosus, in 5 Co. This is indeed the leading case, and to which almost all the other cases upon the subject of libels do refer; and I must insist upon saying, That according as this case seems to be understood by the court and Mr. Attorney, it is not law at this day: for though I own it to be base and unworthy to scandalize any man, nay I think it is even villainous to scandalize a person of public character, and I will go so far into Mr. Attorney's doctrine, as to agree, that if the faults, mistakes, nay even the vices of such a person be private and personal, and do not affect the peace of the public, or the liberty or property of our neighbour, it is unmanly and unmannerly to expose them either by word or writing. But when a ruler of people brings his personal failings, but much more his vices, into his administration, and the people find themselves affected by them, either in their liberties or properties that will alter the case mightily, and all the high things that are said in favour of rulers, and of dignities, and upon the side of power, will not be able to stop people's mouths when they feel themselves oppressed, I mean in a free government. It is true in times past it was a crime to speak truth, and in that terrible court of star-chamber, many worthy and brave men suffered for so doing; and yet even in that court, and in those bad times, a great and good man durst say, what I hope will not be taken amiss of me to say in this place, to

wit, "The practice of informations for libels, is a sword in the hands of a wicked king, and an arrand coward, to cut down and destroy the innocent; the one cannot, because of his high station, and the other dares not, because of his want of courage, revenge himself in another manner."

Mr. Attorney. Pray, Mr. Hamilton, have a care what you say, do not go too far neither; I do not like those liberties.

Mr. Hamilton. Sure, Mr. Attorney, you won't make any applications; all men agree, that we are governed by the best of kings, and I cannot see the meaning of Mr. Attorney's caution: my well-known principles, and the sense I have of the blessings we enjoy under his present majesty, makes it impossible for me to err, and I hope, even to be suspected, in that point of duty to my king. May it please your honour, I was saying, That notwithstanding all the duty and reverence claimed by Mr. Attorney to men in authority, they are not exempt from observing the rules of common justice, either in their private or public capacities; the laws of our mother-country know no exemption. It is true, men in power are harder to be come at for wrongs they do, either to a private person or to the public; especially a governor in the plantations, where they insist upon an exemption from answering complaints of any kind in their own government. We are indeed told, and it is true they are obliged to answer a suit in the king's courts at Westminster, for a wrong done to any person here; but do we not know how impracticable this is to most men among us, to leave their families (who depend upon their labour and care for their livelihood) and carry evidences to Britain, and at a great nay a far greater expence than almost any of us are able to bear, only to prosecute a governor for an injury done here. But when the oppression is general, there is no remedy even that way: however, our constitution has (blessed be God) given us an opportunity, if not to have such wrongs redressed, yet by our prudence and resolution we may in a great measure prevent the committing of such wrongs, by making a governor sensible that it is his interest to be just to those under his care; for such is the sense that men in general (I mean freemen) have of common justice, that when they come to know, that

a chief magistrate abuses the power with which he is trusted, for the good of the people,and is attempting to turn that very power against the innocent, whether of high or low degree; I say, mankind in general seldom fail to interpose, and, as far as they can, prevent the destruction of their fellow-subjects. And has it not often been seen (and I hope it will always be seen) that when the representatives of a free people are, by just representations or remonstrances, amde sensible of the sufferings of their fellow subjects, by the abuse of power in the hands of a governor, they have declared (and loudly too) that they were not obliged by any law to support a governor who goes about to destroy a province or colony, or their privileges, which by his majesty he was appointed, and by the law he is bound, to protect and encourage. But I pray it may be considered of what use is this mighty privilege, if every man that suffers must be silent? and if, a man must be taken up as a libeller for telling his sufferings to his neighbour. I know it may be answered, Have you not a legislature? Have you not a house of representatives to whom you may complain? And to this I answer, we have. But what then? Is an assembly to be troubled with every injury done by a governor? Or are they to hear of nothing but what those in the administration will please to tell them? Or what sort of a trial must a man have? And how is it to be remedied; especially if the case were, as I have known it to happen in America in my time, That a governor who has places (I will not say pensions, for I believe they seldom give that to another which they can take to themselves) to bestow, and can or will keep the same assembly (after he has modelled them so as to get a majority of the house in his interest) for near twice seven years together? I pray, what redress is to be expected for an honest man, who makes his complaint against a governor, to an assembly who may properly enough be said,to be made by the same governor against whom the complaint is made? The thing answers itself. No, it is natural, it is a privilege; I will go farther, it is a right which all freemen claim, and are intitled to complain when they are hurt; they have a right publicly to remonstrate against the abuses of power in the strongest terms, to put their neighbours upon their guard against the craft or open violence of men in authority, and to assert with courage the

sense they have of the blessings of liberty, the value they put upon it, and their resolution at all hazards to preserve it, as one of the greatest blessings Heaven can bestow. And when a house of assembly composed of honest freemen sees the general bent of the people's inclinations, That is it which must and will (I am sure it ought to) weigh with a legislature, in spite of all the craft, caressing and cajoling, made use of by a governor, to divert them from hearkening to the voice of their country. As we all very well understand the true reason, why gentlemen take so much pains and make such great interest to be appointed governors, so is the design of their appointment not less manifest. We know his majesty's gracious intentions to his subjects; he desires no more than that his people in the plantations should be kept up to their duty and allegiance to the crown of Great-Britain, that peace may be preserved amongst them, and justice impartially administered; that we may be governed so as to render us useful to our mother-country, by encouraging us to make and raise such commodities as may be useful to Great-Britain. But will any one say, that all or any of these good ends are to be effected by a governor's setting his people together by the ears, and by the assistance of one part of the people to plague and plunder the other? The commission which governors bear, while they execute the powers given them, according to the intent of the royal granter, expressed in their commissions, requires and deserves very great reverence and submission: but when a governor departs from the duty enjoined him by his sovereign, and acts as if he was less accountable than the royal hand that gave him all that power and honour which he is possessed of; this sets people upon examining and enquiring into the power, authority, and duty, of such a magistrate, and to compare these with his conduct; and just as far as they find he exceeds the bounds of his authority, or falls short of doing impartial justice to the people under his administration, so far they very often, in return, come short in their duty to such a governor. Power alone will not make a man beloved; and I have heard it observed, That the man who was neither good nor wise before his being made a governor, never mended upon his preferment; but has been generally observed to be worse: for men who are not endued with wisdom and virtue, can

enly be kept in bounds by the law; and by how much the further they think themselves eut of the reach of the law, by so much the more wicked and cruel men are. I wish there were no instances of the kind at this day. And wherever this happens to be the case of a governor, unhappy are the people under his administratien, and in the end he will find himself so too; for the people will neither love him nor support him. I make no doubt but there are those here, who are zealously concerned for the success of this prosecutien; and yet I hope they are not many, and even some of those, I am persuaded, (when they consider what lengths such prosecutions may be carried, and how deeply the liberties of the people may be affecteo by such means) will not all abide by their present sentiments; I say, not all: for a man who from an intimacy and acquaintance with a governor, has conceived a personal regard for him; the man who has felt none of the strokes of his power, the man who believes that a governor has a regard for him and confides in him, it is natural for such men to wish well to the affairs of such a governor; and as they may be men of honour and generosity, may, and no doubt will, wish him success, so far as the rights and privileges of their fellow citizens are not affected. But as men of honour, I can apprehend nothing from them; they will never exceed that point. There are others that are under strenger obligations, and those are such as are in some sort engaged in support of a governor's cause, by their own or their relations' dependence on his favour, for some post or preferment; such men have what is commonly called duty and gratitude, to influence their inclinations, and oblige them to go his lengths. I know mens' interests are very near to them, and they will do much rather than forego the favour of a governor, and a livelihood at the same time; but I can with very just grounds hope, even from these men, whom I will suppose to be men of honour and conscience too, that when they see the liberty of their country in danger, either by their concurrence,or even by their silence, they will, like Englishmen, and like themselves, freely make a sacrifice of any preferment or favour rather than be accessary to destroying the liberties of their country, and entailing slavery upon their posterity. There are indeed another set of men, of whom I have no hopes, I mean such, who lay aside all other considera-

tions, and are ready to join with power in any shape, and with any man or sort of men, by whose means or interest they may be assisted to gratify their malice and envy against those whom they have been pleased to hate; and that for no other reason, but because they are men of abilities and integrity, or at least are possessed of some valuable qualities far superior to their own. But as envy is the sin of the devil, and therefore very hard, if at all, to be repented of, I will believe there are but few of this detestable and worthless sort of men, nor will their opinions or inclinations have any influence upon this trial. But to proceed; I beg leave to insist, that the right of complaining or remonstrating is natural; and the restraint upon this natural right is the law only, and that those restrains can only extend to what is false; for as it is truth alone which can excuse or justify any man for complaining of a bad administration, I as frankly agree, that nothing ought to excuse a man who raises a false charge or accusation even against a private person, and that no manner of allowance ought to be made him who does so against a public magistrate. Truth ought to govern the whole affair of libels, and yet the party accused runs risque enough even then; for if he fails of proving every tittle of what he has wrote, and to the satisfaction of the court and jury too, he may find to his cost, that, when the prosecution is set on foot by men in power, it seldom wants friends to favour it. And from thence (it is said) has arisen the great diversity of opinions among judges, about what words were or were not scandalous or libellous. I believe it will be granted, that there is not greater uncertainty in any part of the law, than about words of scandal; it would be mispending of the court's time to mention the cases; they may be said to be numberless; and therefore the utmost care ought to be taken in following precedents; and the times when the judgments were given, which are quoted for authorities in the case of libels are much to be regarded. I think it will be agreed, That ever since the time of the star-chamber, where the most arbitrary and destructive judgments and opinions were given that ever an Englishman heard of, at least in his own country; I say, prosecutions for libels since the time of that arbitrary court, and until the glorious revolution, have generally been set on foot at the instance of the crown

or its ministers; and it is no small reproach to the law, that these prosecutions were too often and too much countenanced by the judges, who held their places at pleasure, (a disagreeable tenure to any officer, but a dangerous one in the case of a judge.) To say more to this point may not be proper. And yet I cannot think it unwarrantable, to shew the unhappy influence that a sovereign has sometimes had, not only upon judges, but even upon parliaments themselves.

It has already been shewn, how the judges differed in their opinions about the nature of a libel, in the case of the seven bishops. There you see three judges of one opinion, that is, of a wrong opinion, in the judgment of the best men in England, and one judge of a right opinion. How unhappy might it have been for all of us at this day, if that jury had understood the words in that information as the court did? Or if they had left it to the court, to judge whether the petition of the bishops was or was not a libel? No! they took upon them, to their immortal honour, to determine both law and fact, and to understand the petition of the bishops to be no libel, that is, to contain no falshood nor sedition, and therefore found them not guilty. And remarkable is the case of Sir Samuel Barnardiston, who was fined 10,000£. for writing a letter, in which, it may be said, none saw any scandal or falshood but the court and jury; for that judgment was afterwards looked upon as a cruel and detestable judgment, and therefore was reversed by parliament. Many more instances might be given of the complaisance of court judges, about those times and before; but I will mention only one case more, and that is the case of Sir Edward Hales, who, tho' a Roman Catholic, was by king James II. preferred to be a colonel of his army, notwithstanding the statute of 25 Cha. 2d. Chap. 2. by which it is provided, "That every one that accepts of an office, civil or military, &c. shall take the oaths, subscribe the declaration, and take the sacrament, within three months, &c. otherwise he is disabled to hold such office, and the grant for the same to be null and void, and the party to forfeit 500£." Sir Edward Hales did not take the oaths or sacrament, and was prosecuted for the 500£. for exercising the office of a colonel by the space of three months, without conforming as in the act is

directed. Sir Edward pleads, "That the king by his letters-patents did dispense with his taking the oaths and sacrament, and subscribing the declaration, and had pardoned the forfeiture of 500£." And "whether the king's dispensation was good, against the said act of parliament?" was the question, I shall mention no more of this case, than to shew how in the reign of an arbitrary prince, where judges hold their seats at pleasure, their determinations have not always been such as to make precedents of, but the contrary; and so it happened in this case where it was solemnly judged, "That, notwithstanding this act of parliament, made in the strongest terms for preservation of the protestant religion, That yet the king had, by his royal prerogative a power to dispense with that law:" and Sir Edward Hales was acquitted by the judges accordingly. So the king's dispensing power, being by the judges set up above the act of parliament, this law, which the people looked upon as their chief security against popery and arbitrary power, was by this judgment rendered altogether ineffectual. But this judgment is sufficiently exposed by Sir Edward Atkins (1), late one of the judges of the court of Common-pleas in his Enquiry into the king's power of dispensing with poenal statutes; where it is shewn, who it was that first invented dispensations; how they came into England; what ill use has been made of them there; and all this principally owing to the countenance given them by the judges. He says of the dispensing power (2), The pope was the inventer of it; our kings have borrowed it from them; and the judges have from time to time nursed and dressed it up, and given it countenance; and it is still upon the growth, and encroaching, 'till it has almost subverted all law, and made the regal power absolute if not dissolute. This seems not only to shew how far judges have been influenced by power, and how little cases of this sort, where the prerogative has been in question in former reigns, are to be relied upon for law: but I think it plainly shews

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(1) Sir Edward Atkin's enquiry into the power of dispensing with penal statutes.

(2) Postscript to the Enquiry, pag. 51.

too, that a man may use a greater freedom with the power of his sovereign and the judges in Great-Britain, than it seems he may with the power of a governor in the plantations, who is but a fellow-subject. Are these words with which we are charged, like these? Do Mr. Zenger's papers contain any such freedoms with his governor or his council, as Sir Edward Atkins has taken with the regal power and the judges in England? And yet I never heard of any information brought against him for these freedoms.

If then upon the whole there is so great an uncertainty among judges (learned and great men) in matters of this kind; if power has had so great an influence on judges, how cautious ought we to be in determining by their judgments, especially in the plantations, and in the case of libels? There is heresy in law, as well as in religion, and both have changed very much; and we well know, that it is not two centuries ago that a man would have been burnt as an heretic, for owning such opinions in matters of religion as are publicly wrote and printed at this day. They were fallible men, it seems, and we take the liberty not only to differ from them in religious opinions, but to condemn them and their opinions too; and I must presume, that in taking these freedoms in thinking and speaking about matters of faith or religion, we are in the right: for, tho' it is said there are very great liberties of this kind taken in New-York, yet I have heard of no information preferred by Mr. Attorney for any offences of this sort. From which I think it is pretty clear, That in New-York a man may make very free with his God, but he must take special care what he says of his governor. It is agreed upon by all men that this is a reign of liberty, and while man keep within the bounds of truth, I hope they may with safety both speak and write their sentiments of the conduct of men in power, I mean of that part of their conduct only, which affects the liberty or property of the people under their administration. Were this to be denied, then the next step may make them slaves; for what notions can be entertained of slavery, beyond that of suffering the greatest injuries and oppressions, without the liberty of complaining; or if they do, to be destroyed, body and estate, for so doing.

It is said and insisted on by Mr. Attorney, "That government is a sacred thing; That it is to be supported and revereneed; it is government that proteets our persons and estates; That prevents treasons, murders, robberies, riots, and all the train of evils that overturns kingdoms and states, and ruins particular persons; and if those in the administration, especially the supreme magistrate, must have all their conduet eensured by private men, government eannot subsist." This is called a lieentiousness not to be tollerated. It is said, "That it brings the rulers of the people into eontempt, and their authority not to be regarded, and so in the end the laws eannot be put in exeeution." These I say, and sueh as these, are the general topics insisted upon by men in power, and their advoeates. But I wish it might be considered at the same time, how often it has happened, that the abuse of power has been the primary cause of these evils, and that it was the injustiee and oppression of these great men, which has eommonly brought them into eontempt with the people. The eraft and art of sueh men is great, and who, that is the least aequainted with history or law, can be ignorant of the speeious pretenees whieh have often been made use of by men in power, to introduee arbitrary rule, and destroy the liberties of a free people. I will give two instances; and as they are authorities not to be denied, nor ean be misunderstood, I presume they will be sufficient.

The first is the statute of 3d of Hen. 7. Cap. 1. The preamble of the statute will prove all, and more than I have alleged. It begins, "The king our sovereign lord remembereth how by unlawful maintenanees, giving of liveries, signs and tokens, &e. untrue demeanings of sheriffs in making of pannels, and other untrue returns, by taking of money, by injuries, by great riots and unlawful assemblies; the poliey and good rule of this realm is almost subdued; and for the not punishing these inconvenieneies, and by oeeasion of the premisses, little or nothing may be found by inquiry, &c. to the increase of murders, &e. and unsureties of all men living, and losses of their lands and goods." Here is a fine and speeieus pretenee for introducing the remedy, as it is called, which is provided by this act, that is; instead of being lawfully aecused by 24

good and lawful men of the neighbourhood, and afterwards tried by 12 like lawful men, here is a power given to the lord chancellor, lord treasurer, the keeper of the king's privy-seal, or two of them, calling to them a bishop, a temporal lord, and other great men mentioned in the act, (who, it is to be observed, were all to be dependents on the court) to receive information against any person for any of the misbehaviours recited in that act, and at their discretion to examine and to punish them according to their demerit.

The second statute I proposed to mention, is the 11th of the same king, Cap. 3. the preamble of which act has the like fair pretences as the former; "for the king calling to his remembrance for the good laws made against the receiving of liveries, &c. unlawful extortions, maintenances, embracery, &c. unlawful games, &c. and many other great enormities, and offences committed against many good statutes, to the displeasure of almighty God," which, the act says, "could not, nor yet can, be conveniently punished by the due order of the law, except it were first found by 12 men, &c. which,for the causes aforesaid, will not find nor yet present the truth." And therefore the same statute directs, "That the justices of assize, and justices of the peace, shall upon information for the king before them made, have full power, by their discretion, to hear and determine all such offences. "Here are two statutes that are allowed to have given the deepest wound to the liberties of the people of England of any that I remember to have been made, unless it may be said, that the statute made in the time of Henry VIIIth, by which his proclamations were to have the effect of laws, might in its consequence be worse. And yet we see the plausible pretences found out by the great men to procure these acts. And it may justly be said, That by those pretences the people of England were cheated or awed into the delivering up their antient and sacred right of trials by grand and petit juries. I hope to be excused for this expression, seeing my Lord Coke (in his 4th institute) calls it "an unjust and strange act, that tended in its execution to the great displeasure of almighty God, and the utter subversion of the common law."

These, I think, make out what I alleged, and are flagrant instances of the influence of men in power, even upon the representatives of a whole kingdom. From all which I hope it will be agreed, that it is a duty which all good men owe to their country, to guard against the unhappy influence of ill men when intrusted with power, and especially against their creatures and dependants, who, as they are generally more necessitous, are surely more covetous and crüel. But it is worthy of observation, that tho' the spirit of liberty was borne down and oppressed in England at that time, yet it was not lost; for the parliament laid hold of the first opportunity to free the subject from the many insufferable oppressions and outrages committed upon their persons and estates by colour of these acts, the last of which being deemed the most grievous, was repealed in the first year of Henry VIIIth. Tho' it is to be observed, that Henry VIIth and his creatures reaped such great advantages by the grievous oppressions and exactions, grinding the faces of the poor subjects, as my lord Coke says, by colour of this statute by information only, that a repeal of this act could never be obtained during the life of that prince. The other statute, being the favourite law for supporting arbitrary power, was continued much longer. The execution of it was by the great men of the realm; and how they executed it, the sense of the kingdom, expressed in the 17th of Charles 1st, (by which the court of star-chamber, the soil where informations grew rankest) will best declare. In that statute Magna Charta, and the other statutes made in the time of Edward III. which, I think, are no less than five, are particularly enumerated as acts, by which the liberties and privileges of the people of England were secured to them, against such oppressive courts as the star-chamber and others of the like jurisdiction. And the reason assigned for their pulling down the star-chamber, is, "That the proceedings, censures and decrees of the court of star-chamber, even tho' the great men of the realm, nay, and a bishop too (holy man) were judges, had by experience been found to be an intolerable burthen to the subject, and the means to introduce an arbitrary power and government." And therefore, that court was taken away, with all the other courts in that statute mentioned, having like jurisdiction.

I do not mention this statute, as if, by the taking away the court of star-chamber, the remedy for many of the abuses of offences censured there, was likewise taken away; no, I only intend by it to shew, that the people of England saw clearly the danger of trusting their liberties and properties to be tried, even by the greatest men in the kingdom, without the judgment of a jury of their equals. They had felt the terrible effects of leaving it to the judgment of these great men to say what was scandalous and seditious, false or ironical. And if the parliament of England thought this power of judging was too great to be trusted with men of the first rank in the kingdom, without the aid of a jury, how sacred soever their characters might be, and therefore restored to the people their original right of trial by juries, I hope to be excused for insisting, that by the judgment of a parliament, from whence no appeal lies, the jury are the proper judges, of what is false at least, if not of what is scandalous and seditious. This is an authority not to be denied; it is as plain as it is great; and to say, that this act indeed did restore to the people trials by juries, which was not the practice of star-chamber, but that did not give the jurors any new authority, or any right to try matters of law, I say this objection will not avail; for I must insist, that where matter of law is complicated with matter of fact, the jury have a right to determine both. As for instance; upon indictment for murder, the jury may, and almost constantly do, take upon them to judge whether the evidence will amount to murder or manslaughter, and find accordingly; and I must say I cannot see, why in our case the jury have not at least as good a right to say, whether our newspapers are a libel or no libel, as another jury has to say, whether killing of a man is murder or manslaughter. The right of the jury, to find such a verdict as they in their conscience do think is agreeable to their evidence, is supported by the authority of Bushel's case, Vaughan's reports, p. 135. beyond any doubt. For, in the argument of that case, the chief justice, who delivered the opinion of the court, lays it down for law, (Vaughan's reports, p.150) "That in all general issues; as upon NON CUL. in trespass, NON TORT. NUL DISSEIZIN in assize, &c. tho' it is matter of law, whether the defendant is a trespasser, a disseizer, &c.

in the particular cases in issue, yet the jury find not (as in a special verdict) the fact of every case, leaving the law to the court; but find for the plaintiff or defendant upon the issue to be tried, wherein they resolve both law and fact complicately." It appears by the same case, that tho' the discreet and lawful assistance of the judge, by way of advice to the jury, may be useful; yet that advice or direction ought always to be upon supposition, and not positive, and upon coersion. (p. 144.) The reason given in the same book (p.147.) is, "Because the judge (as judge) cannot know what the evidence which the jury have, may be of their own knowledge, as they are returned of the neighbourhood. They may also know from their own knowledge, that what is sworn in court is not true; and they may know the witnesses to be stigmatized, to which the court may be strangers." But what speaks most to my purpose, is, that suppose the court did really know all the evidence the jury know, yet in that case it is agreed, "That the judge and jury may differ in the result of their evidence as well as two judges may," which often happens. And (p.148.) the judge subjoins the reason, why it is no crime for a jury to differ in opinion from the court, where he says, "That a man cannot see with another's eye, nor hear by another's ear; no more can a man conclude or infer the thing by another's understanding or reasoning." From all which (I insist) it is very plain, "That the jury are by law at liberty (without any affront to the judgment of the court) to find both the law and the fact, in our case," as they did in the case I am speaking to, which I will beg leave just to mention, and it was this. Mr. Penn and Mead being Quakers, and having met in a peaceable manner, after being shut out of their meeting-house, preached in Grace-Church-Street in London, to the people of their own persuasion, and for this they were indicted; and it was said, "That they with other persons, to the number of 300, unlawfully and tumultuously assembled,to the disturbance of the peace," &c. To which they pleaded, not guilty. And the petit jury being sworn to try the issue between the king and the prisoners, that is, whether they were guilty, according to the form of the indictment; here there was no dispute but they were assembled together, to the number mentioned in the indictment; but, "whether that meeting together was riotously, tumultuous-

ly, and to the disturbance of the peace, was the question." And the court told the jury it was, and ordered the jury to find it so; "For," said the court, "the meeting was the matter of fact, and that is confessed,and we tell you it is unlawful, for it is against the statute; and the meeting being unlawful, it follows of course that it was tumultuous, and to the disturbance of the peace." But the jury did not think fit to take the court's word for it; for they could neither find riot, tumult, or any thing tending to the breach of the peace, committed at that meeting; and they acquitted Mr. Penn and Mead. In doing of which they took upon them to judge both the law and the fact; at which the court (being themselves true courtiers) were so much offended, that they fined the jury forty marks a-piece, and committed them till paid. But Mr. Bushel, who valued the right of a juryman and the liberty of his country more than his own, refused to pay the fine; and was resolved (though at a great expence and trouble too) to bring, and did bring, his HABEAS CORPUS, to be relieved from his fine and imprisonment, and he was released accordingly; and this being the judgment in his case, it is established for law, "That the judges, how great soever they be, have no right to fine, imprison, or punish a jury, for not finding a verdict according to the direction of the court." And this I hope is sufficient to prove, That jurymen are to see with their own eyes, to hear with their own ears, and to make use of their own consciences and understandings, in judging of the lives, liberties or estates of their fellow-subjects. And so I have done with this point.

This is the second information for libelling of a governor that I have known in America; and the first, though it may look like a romance; yet, as it is true, I will beg leave to mention it. Governor Nicholson, who happened to be offended with one of his clergy, met him one day upon the road, and, as was usual with him (under the protection of his commission) used the parson with the worst of language,threatened to cut off his ears, slit his nose, and at last to shoot him through the head. The parson, being a reverend man, continued all this time uncovered in the heat of the sun, until he found an opportunity to fly for it; and coming to a neighbour's house,

felt himself very ill of a fever, and immediately writes for a doctor; and, that his physician might be the better judge of his distemper, he acquainted him with the usage he had received; concluding, that the governor was certainly mad, for that no man in his senses would have behaved in that manner, The doctor unhappily shews the parson's letter; the governor came to hear of it;and so an information was preferred against the poor man, for saying he believed the governor was mad; and it was laid in the information to be false, scandalous and wicked, and wrote with intent to move sedition among the people, and bring his excellency into contempt. But, by an order from the late queen Anne, there was a stop put to that prosecution, with sundry others, set on foot by the same governor, against gentlemen of the greatest worth and honour in that government.

And may not I be allowed, after all this, to say, That, by a little countenance, almost any thing which a man writes, may,with the help of that useful term of art called an Innuendo, be construed to be a libel, according to Mr. Attorney's definition of it. That whether the words are spoke of a person of a public character, or of a private man, whether dead or living, good or bad, true or false, all make a libel; for, according to Mr. Attorney, after a man hears a writing read, or reads and repeats it, or laughs at it, they are all punishable. It is true, Mr. Attorney is so good as to allow, after the party knows it to be a libel; but he is not so kind as to take the man's word for it.

(Here were several cases put to shew, That though what a man writes of a governor was true, proper and necessary; yet. according to the foregoing doctrine, it might be construed to be a libel; but Mr. Hamilton, after the trial was over, being informed, That some of the cases he had put had really happened in this government, he declared he had never heard of any such; and, as he meant no personal reflections, he was sorry he had mentioned them, and therefore they are omitted here.)

Mr. Hamilton. If a libel is understood in the large and

unlimitted sense urged by Mr. Attorney, there is scarce a writing I know that may not be called a libel, or scarce any person safe from being called to an account as a libeller; for Moses, meek as he was, libelled Cain; and who is it that has not libelled the devil? For, according to Mr. Attorney, it is no justification to say one has a bad name: Echard has libelled our good king William; Burnet has libelled, among many others, king Charles and king James; and Rapin has libelled them all. How must a man speak or write, or what must he hear, read, or sing, or when must he laugh, so as to be secure from being taken up as a libeller? I sincerely believe, that were some persons to go thro' the streets of New-York now-a-days, and read a part of the Bible, if it was not known to be such, Mr. Attorney, with the help of his innuendoes, would easily turn it into a libel. As, for instance, Is.ix.16. "The leaders of the people cause them to err, and they that are led by them are destroyed." But should Mr. Attorney go about to make this a libel, he would read it thus: The leaders of the people (innuendo, the governor and council of New-York) cause them (innuendo, the people of this province) to err, and they (the people of this province meaning) are destroyed (innuendo, are deceived into the loss of their liberty) which is the worst kind of destruction. Or if some person should publicly repeat, in a manner not pleasing to his betters, the 10th and 11th verses of the LVIth chap. of the same book, there Mr. Attorney would have a large field to display his skill, in the artful application of his innuendoes. The words are, "His watchmen are all blind, they are ignorant, &c. Yea, they are greedy dogs, that can never have enough." But to make them a libel, there is, according to Mr. Attorney's doctrine, no more wanting but the aid of his skill in the right adapting his innuendoes. As, for instance, His watchmen (innuendo, the governor's council and assembly) are blind, they are ignorant (innuendo, will not see the dangerous designs of his excellency) Yea, they (the governor and council meaning) are greedy gods, which can never have enough (innuendo, enough of riches and power.) Such an instance as this seems only fit to be laughed at; but I may appeal to Mr. Attorney himself, whether these are not at least equally proper to be applied to his excellency and his ministers, as some of the inferences

and innuendoes in his information against my client. Then, if Mr. Attorney is at liberty to come into court, and file an information in the king's name, without leave, who is secure whom he is pleased to prosecute as a libeller? And as the crown-law is contended for in bad times, there is no remedy for the greatest oppression of this sort, even though the party prosecuted is acquitted with honour. And give me leave to say, as great men as any in Britain have boldly asserted, That the mode of prosecuting by information (when the grand-jury will not find BILLA VERA) is a national grievance, and greatly inconsistent with the freedom which the subjects of England enjoy in most other cases. But if we are so unhappy as not to be able to ward off this stroke of power directly, yet let us take care not to be cheated out of our liberties by forms and appearances; let us always be sure, that the charge in the information is made out clearly, even beyond a doubt; for though matters in the information may be called Form upon Trial, yet they may be, and often have been found to be, Matters of Substance upon giving judgment.

Gentlemen, the danger is great, in proportion to the mischief that may happen, through our too great credulity. A proper confidence in a court is commendable; but as the verdict (whatever it is) will be yours, you ought to refer no part of your duty to the discretion of other persons. If you should be of opinion, that there is no falshood in Mr. Zenger's papers, you will, nay (pardon me for the expression) you ought to say so; because you do not know, whether others (I mean the court) may be of that opinion. It is your right to do so, and there is much depending upon your resolution, as well as upon your integrity.

The loss of liberty to a generous mind, is worse than death; and yet we know there have been those, in all ages, who, for the sake of preferment, or some imaginary honour, have freely lent a helping hand, to oppress, nay to destroy, their country. This brings to my mind that saying of the immortal Brutus, when he looked upon the creatures of Caesar, who were very great men, but by no means good men. "You, Romans," said Brutus, "if yet I may call you so, consider what you are doing;

remember you are assisting Caesar to forge those very chains, which one day he will make yourselves wear." This is what every man (who values freedom) ought to consider; he should act by judgment, and not by affection of self-interest; for, where these prevail,no ties of either country or kindred are regarded; as, on the other hand, the man, who loves his country, prefers its liberty to all other considerations; well knowing that, without liberty, life is a misery.

A famous instance of this you will find in the history of another brave Roman of the same name: I mean Lucious Junius Brutus, whose story is well known, and therefore I shall mention no more of it, than only to shew the value he put upon the freedom of his country. This great man, assisted by a few fellow-citizens whom he had engaged in the cause, had banished Tarquin the Proud, the last king of Rome, from a throne he had ascended by inhuman murders, and possessed by the most dreadful tyranny and proscriptions: but Tarquin, by these means, had amassed incredible riches; even sufficient to bribe many of the young nobility of Rome, to assist him in recovering the crown. The plot however being discovered, the principal conspirators were apprehended, among whom were two of the sons of Junius Brutus. It was absolutely necessary that some should be made examples of, to deter others from attempting the restoring of Tarquin, and destroying the liberty of Rome. And to effect this it was, that Lucious Junius Brutus, one of the consuls of Rome, in the presence of the Roman people, sat judge and condemned his own sons, as traitors to their country; and to give the last proof of his exalted virtue and love of liberty, he, with a firmness of mind only becoming so great a man, caused their heads to be struck off in his own presence; and when he observed that his rigid virtue occasioned a sort of horror among the people, it is observed he only said, "My fellow citizens, do not think that this proceeds from any want of natural affection: no, the death of the sons of Brutus can affect Brutus only; but the loss of liberty will affect my country." Thus highly was liberty esteemed in those days, that a father could sacrifice his sons to save his country. But why do I go to heathen Rome, to bring instances of the love of liberty; the best blood in Britain has been shed in

the cause of liberty; and the freedom we enjoy at this day, may be said to be, in a great measure, owing to the glorious stand the famous Hampden, and others of our countrymen, made against the arbitrary demands, and illegal impositions, of the times in which they lived; who rather than give up the rights of Englishmen, and submit to pay an illegal tax of no more, I think, than three shillings, resolved to undergo, and for the liberty of their country did undergo, the greatest extremities, in that arbitrary and terrible court of Star-chamber, to whose arbitrary proceedings (it being composed of the principal men of the realm, and calculated to support arbitrary government) no bounds or limits could be set, nor could any other hand remove the evil but a parliament.

Power may justly be compared to a great river, which, kept within due bounds, is both beautiful and useful; but when it overflows its banks, it is then too impetuous to be stemmed; it bears down all before it, and brings destruction and desolation wherever it comes. If then this is the nature of power, let us at least do our duty, and like wise men (who value freedom) use our utmost care to support liberty, the only bulwark against lawless power, which in all ages has sacrificed to its wild lust and boundless ambition, the blood of the best men that ever lived.

I hope to be pardoned, Sir, for my zeal upon this occasion; it is an old and wise caution, that when our neighbour's house is on fire, we ought to take care of our own. For though, blessed be God, I live in a government where liberty is well understood, and freely enjoyed; yet experience has shewn us all (I am sure it has to me) that a bad precedent in one government is soon set up for an authority in another; and therefore I cannot but think it mine, and every honest man's duty, that (while we pay all due obedience to men in authority) we ought at the same time to be upon our guard against power, whenever we apprehend it may injuriously affect ourselves or our fellow-subjects.

I am truly very unequal to such an undertaking, on many accounts. And you see I labour under the weight of many years

and am borne down with great infirmities of body; yet old and weak as I am, I should think it my duty, if required, to go to the utmost part of the land, where my service could be of any use in assisting to quench the flame of prosecutions upon informations, set on foot by the government, to deprive a people of the right of remonstrating, and complaining of, the arbitrary attempts of men in power. Men who injure and oppress the people under their administration, provoke them to cry out and complain; and then make that very complaint the foundation for new oppressions and prosecutions. I wish I could say there were no instances of this kind. But to conclude; the question before the court and you, gentlemen of the jury, is not of small or private concern; it is not the cause of a poor printer, nor of New-York alone, which you are now trying: no! it may, in its consequence, affect every freeman that lives under a British government on the main of America. It is the best cause; it is the cause of liberty! and I make no doubt but your upright conduct, this day, will not only entitle you to the love and esteem of your fellow-citizens; but every man who prefers freedom to a life of slavery, will bless and honour you, as men who have baffled the attempt of tyranny, and who, by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbours, That, to which nature and the laws of our country have given us a right,--the liberty--both of exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth.

(Here Mr. Attorney observed, that Mr. Hamilton had gone very much out of the way, and had made himself and the people very merry: but that he had been citing cases not at all to the purpose. He said, there was no such cause as Mr. Bushel's or Sir Edward Hale's before the court; and he could not find out what the court or jury had to do with dispensations, riots, or unlawful assemblies; all that the jury had to consider of, was Mr. Zenger's printing and publishing two scandalous libels, which very highly reflected on his excellency and the principal men concerned in the administration of this government, which is confessed. That is, the printing and publishing of the journals set forth in the information is confessed. And

concluded, that, as Mr. Hamilton had confessed the printing, and there could be no doubt but they were scandalous papers, highly reflecting upon his excellency, and the principal magistrates in the province; and therefore he made no doubt but the jury would find the defendant guilty, and would refer to the court for their direction.)

Mr. Ch. Justice. Gentlemen of the jury: The great pains Mr. Hamilton has taken, to shew how little regard juries are to pay to the opinion of the judges; and his insisting so much upon the conduct of some judges in trials of this kind, is done no doubt with a design that you should take very little notice of what I may say upon this occasion. I shall therefore only observe to you, that, as the facts or words in the information are confessed, the only thing that can come in question before you is, whether the words, as set forth in the information, make a libel. And that is a matter of law, no doubt, and which you may leave to the court. But I shall trouble you no further with any thing more of my own, but read to you the words of a learned and upright judge (1) in a case of the like nature.

"To say that corrupt officers are appointed to administer affairs, is certainly a reflection on the government, If people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist; for it is very necessary for all governments, that the people should have a good opinion of it. And nothing can be worse to any government, than to endeavour to procure animosities: as to the management of them, this has been always looked upon as a crime; and no government can be safe without it be punished."

Now you are to consider, whether these words I have read to you, do not tend to beget an ill opinion of the administration of the government: To tell us, those who are employed know nothing of the matter, and those who do know are not em-

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(1) Chief Justice Holt, in Tutchin's case.

ployed; men are not adapted to offices, but offices to men, out of a particular regard to their interest, and not to their fitness for the places; this is the purport of these papers.

Mr. Hamilton. I humbly beg your honour's pardon: I am very much misapprehended, if you suppose what I said was so designed.

Sir, you know, I made an apology for the freedom I found myself under a necessity of using upon this occasion. I said, there was nothing personal designed; it arose from the nature of our defence.

The jury withdrew, and in a small time returned, and being asked by the clerk, "Whether they were agreed of their verdict, and whether John Peter Zenger was guilty of printing and publishing the libels in the information mentioned?"

They answered by Thomas Hunt, their foreman, NOT GUILTY.

Upon which there were three huzzas in the hall, which was crowded with people; and the next day Zenger was discharged from his imprisonment.

On the fifteenth of September following, Mr. Hamilton was presented with the Freedom of New-York, for his admirable and spirited defence of liberty, on this occasion. A common-council was called, and there being present the mayor, recorder, aldermen, &c. they ordered, "That Andrew Hamilton, esq; of Philadelphia, barrister at law, be presented with the freedom of this corporation." Accordingly a grant of the freedom was made out, of which the following is a copy.

City of New-York. (ss. PAUL RICHARDS, esq; the recorder, aldermen and assistants, of the city of New-York, convened in common-council, to all to whom these presents shall come greeting. WHEREAS, honour is the just reward of virtue, and public benefits demand a public acknowledgement.

We therefore, under a grateful sense of the remarkable service done to the inhabitants of this city and colony, by Andrew Hamilton, esq; of Pensylvania, barrister at law, by his learned and generous defence of the rights of mankind, and the liberty of mankind, and the liberty of the press, in the case of John Peter Zenger, lately tried on an information exhibited in the supreme court of this colony, do by these presents, bear to the said Andrew Hamilton, esq; the public thanks of the freemen of this corporation for that signal service, which he cheerfully undertook under great indisposition of body, and generously performed, refusing any fee or reward. And in testimony of our great esteem for his person, and sense of his merit, do hereby present him with the freedom of this corporation. These are therefore to certify and declare, that the said Andrew Hamilton, esq; is hereby admitted, received and allowed, a freeman and citizen of the said city, to have, hold, enjoy and partake of all the benefits, privileges, freedoms and immunities whatsoever, granted or belonging to a freeman and citizen of the said city. In testimony whereof, the common-council of the said city, in common-council assembled, have caused the seal of the said city to be hereunto affixed, this twenty-ninth day of September, A.D. one thousand seven hundred and thirty-five.

By order of common-council, W. SHARPAS, Cl.

Several members of the corporation, and gentlemen of the city, voluntarily contributed sufficient for a gold box of five ounces and a half, for inclosing the seal of the freedom; upon the lid of which, was engraved the arms of New-York.

And the freedom and box were carried to Philadelphia, and there gratefully accepted by Mr. Hamilton.

Round on the lid of the box was engraved, besides the arms of New-York, this motto in a garter:

DEMERSAE LEGES ------- TIMEFACTA LIBERTAS -------- HAEC TANDEM EMUERGUNT.

On the inside of the lid, in a flying garter, this:
NON NUMMIS, -- VIRTUTE PARATUR.

On the front of the rim was part of Tully's wish:
ITA CUICUE EVENIAT, UT DE REPUBLICA MERUIT.

End of ZENGER'S TRIAL.

Trials.

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